

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, requiring the submission of a metes and bounds description of the lands available for leasing included in oil and gas lease offer, NM-A 47649.

Affirmed.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Description of Land -- Oil and Gas Leases: Offers to Lease

An offer to lease a tract of land for oil and gas constitutes an offer to lease any and all of the lands described therein which are available for leasing. Where a lease offer describes a tract of acquired land outside the area of the public land surveys, part of which is unavailable for leasing, a decision of BLM requiring an oil and gas lease offeror to provide a metes and bounds description of those lands available for leasing will be affirmed. The filing of such a description does not alter the priority of the lease offer.

APPEARANCES: Bruce Anderson, pro se; Margaret C. Miller, Office of the Regional Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bruce Anderson has appealed a December 12, 1985, decision of the New Mexico State Office, Bureau of Land Management (BLM), requiring appellant to submit a description, by course and distance, of the area subject to leasing within the tract of land described in his over-the-counter acquired lands oil and gas lease offer, NM-A 47649, filed August 28, 1981.

This is the second BLM decision regarding NM-A 47649 that Anderson has appealed. In the first decision, dated March 9, 1984, BLM rejected oil and gas lease offer NM-A 47649 because Anderson failed to describe by metes and bounds the area within the lease offer that was unavailable for leasing, specifically, the land within the city limits of Corpus Christi, Texas. On

appeal of that decision, the Board held that: (1) an offeror is responsible for furnishing a proper and adequate description of the lands in an over-the-counter lease offer in order to delimit the land in the offer; (2) a lease offer is construed to include all the available land in the described tract; (3) lands within an incorporated city are unavailable for leasing under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1982); 43 CFR 3100.0-3(b)(2)(ii); and (4) where an over-the-counter oil and gas lease offer includes lands unavailable for leasing, such as lands within corporate city limits, the lease offer is properly rejected as to the lands unavailable for leasing and adjudicated as to the remaining lands described in the lease offer. Bruce Anderson, 85 IBLA 270 (1985).

BLM subsequently issued the December 12, 1985, decision requiring Anderson to submit a legal description by course and distance of the lands available for leasing (*i.e.*, excluding the part of the tract within the city limits). On appeal Anderson argues that while the offeror is responsible for describing the lands desired for leasing, BLM is required to determine which of those lands are available for leasing. Anderson contends an offeror is not required to submit a metes and bounds description of the land available for leasing, rather, "BLM is at liberty to use the most practical form of description suitable" (Statement of Reasons at 4). Appellant expresses concern that filing the new description of the available lands will be considered an amendment of the offer which would result in loss of priority.

In response to appellant's contentions, BLM asserts that it is necessary for it to have a legally sufficient description of the lands subject to lease and that it is appropriate for it to require the offeror to provide this. BLM contends that no loss of priority need result if appellant properly complies with its request, citing Kenneth W. Mitchell, 88 IBLA 163 (1985).

We held in our earlier decision regarding this lease offer that where, as in this case, the land description provided by the offeror is in compliance with the regulatory requirements, the offer is not subject to rejection in its entirety merely because a portion of the lands described therein are unavailable for leasing and the offer must be rejected for those lands. Bruce Anderson, *supra* at 272. After noting that an offer to lease expressly constitutes an offer to lease all the lands described therein that are available for leasing, we reaffirmed the longstanding Departmental policy that after unavailable lands are rejected from the offer, the balance is leased, citing William B. Collister, 71 I.D. 124 (1964), and distinguishing Chevron, U.S.A., Inc., 67 IBLA 266 (1982). This is an application of the so-called "bifurcation principle." Kenneth W. Mitchell, *supra* at 163; Sam P. Jones (On Judicial Remand), 84 IBLA 331, 335 (1985).

[1] The issue raised by the present appeal is whether, once BLM has determined that certain lands embraced in the offer are not subject to leasing, the offeror may be required to provide a metes and bounds description

of those lands described in the lease offer which are available for leasing. ^{1/} We believe the answer must be in the affirmative where the lease offer embraces acquired lands outside the limits of the public land surveys. An oil and gas lease requires a legally sufficient description of the land embraced therein. This Board has previously held that the offeror has the responsibility of providing a proper and adequate description of the lands in a lease offer and difficulties in ascertaining a proper metes and bounds description do not obviate the requirement that the lands be adequately described. Husky Oil Co., 74 IBLA 265 (1983). Although a lease offer is not subject to rejection in its entirety where a portion of the land is unavailable for leasing, the burden may properly be placed on the lease offeror to provide a sufficient description of those lands available for leasing. This is essentially what was done by the appellant in the Mitchell case, although in that case the second land description was described as an "amended offer." As we explained in our decision in that case, receipt by BLM of such a revised land description does not constitute such an amendment of the offer to lease as will alter the priority of the original lease offer since, under the bifurcation principle, the offer as originally filed was not subject to rejection in its entirety. Kenneth W. Mitchell, supra at 164-165.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Franklin D. Arness
Administrative Judge

^{1/} The issue is not one of requiring an offeror to make a determination of the availability of the land, but rather one of putting the burden on the offeror, as the beneficiary of the lease, to provide a legally sufficient description.